No.

In The

Supreme Court of the United States

October Term, 1983

LAWRENCE KRIEGER,

Petitioner,

vs.

STATE OF NEW JERSEY,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF NEW JERSEY

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QUESTIONS PRESENTED

1. Did the New Jersey State Supreme Court utilize an insufficient and improper standard in finding that the State introduced into evidence at petitioner's criminal trial sufficient facts and circumstances, aside from the confession of petitioner, from which the jury might properly draw an inference that such confession was trustworthy, thereby rendering such confession a competent basis upon which to submit the State's case to the jury despite petitioner's motion for acquittal?

2. May the independent proof of facts and circumstances which generates a belief in the trustworthiness of a confession be comprised completely of circumstantial evidence and still be deemed "substantial"?

3. May a defendant be convicted where, taken as a whole, his purportedly corroborated confession, which is the State's entire case against him, raises only circumstantial evidence of a defendant's participation in a crime; *i.e.*, the confession on its face does not conclusively demonstrate a defendant's culpability, but merely his belief that he is culpable?

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OPINION BELOW

The opinion of the Supreme Court of the State of New Jersey (Appendix, *infra* at 1a) is reported in ____ N.J. ____ (1984). The opinion of the Superior Court of the State of New Jersey, Appellate Division (4a) was not reported..

JURISDICTION

The judgment of the court below (1a) was entered on May 16, 1984. Rehearing was not sought. The jurisdiction of this Court is involved under 28 U.S.C. §1254(1).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

1. The Fifth Amendment, United States Constitution, which provides:

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

2. The Fourteenth Amendment, United States Constitution, Section 1, which provides:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty,

> or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

3. The statute under which petitioner was prosecuted, N.J.S.A. 2C:17-1(b), which provides:

> Arson. A person is guilty of arson, a crime of the third degree, if he purposely starts a fire or causes an explosion, whether on his own property or another's:
>
> (1) Thereby recklessly placing another person in danger of death or bodily injury; or
>
> (2) Thereby receklessly placing a building or structure of another in danger of damage or destruction; or
>
> (3) With the purpose of collecting insurance for the destruction or damage to such property.

STATEMENT OF THE CASE

Petitioner, Lawrence Krieger, was indicted by the Passaic County, New Jersey, Grand Jury, Indictment No. 397-80 (26a) and charged in Counts One and Two with arson, contrary to N.J.S.A. 2C:17(b)(1&2).

Petitioner was tried on February 17, 18, 19 and 20, 1981 before the Honorable Herbert S. Alterman, J.S.C., and a jury. At the conclusion of the trial, petitioner was found guilty by the jury on both counts of the indictment.

On March 24, 1981, petitioner was sentenced to Count One to an indeterminate term at the New Jersey Correctional Institution Complex. An identical sentence, to run concurrently with the sentence on Count One, was imposed on Count Two of the indictment. Petitioner was additionally fined $25 on each count.

A notice of appeal was filed on March 24, 1981.

The matter was argued before Part D of the Superior Court of New Jersey, Appellate Division on January 4, 1983. In a majority decision dated February 28, 1983, the Appellate Division reversed petitioner's conviction on the ground that there had been no independent corroboration of his confession. The majority then remanded the case for entry of a judgment of acquittal (19a).

The Honorable Herman D. Michaels, P.J.A.D., issued a dissenting opinion to the effect that the State's proofs were sufficiently corroborative to withstand a motion for a judgment of acquittal thereby allowing the case to go to the jury (20a).

A notice of appeal to the New Jersey Supreme Court as of right by the State was filed on this count on April 11, 1983 (28a).

On May 16, 1984 the New Jersey Supreme Court reversed the decision of the Appellate Division and reinstated the conviction of petitioner (1a). In a 4-3 ruling, the majority based its decision on the reasoning set forth in the dissenting opinion in the Appellate Division. The three dissenting justices would affirm for the reasons set forth in the majority opinion of the Appellate Divsion.

Petitioner requested, and received, a stay of commencement of service of his sentence pending determination by this Court of his petition for a writ of certiorari.

FACTS

This case concerns two fires which occurred at the Sealy Mattress Co. in Paterson, New Jersey on January 29 and February 12, 1980. Following the second fire, Investigator Arthur Hyslop of the Passaic County Prosecutor's Office Arson Unit, and another investigator, Robert Daniels, were sent to the premises to investigate. On February 14, 1980, they spoke with petitioner in a spare office on the second floor of the factory. At that time petitioner told them that he did not set the fires and in fact had helped put them out.

Petitioner was then asked if he would consent to a polygraph test, which he did, and the test was arranged for the morning of February 25, 1980.

On February 25, 1980, petitioner arrived at the Prosecutor's Office at about 9:00 a.m. and at about 9:45 a.m., was introduced to Investigator Richard Falcone, who was going to conduct the test. Petitioner was given a permission form for the polygraph test at 10:04 a.m.

The polygraph test, however, was never administered. It was the State's assertion at the trial that, under Falcone's interrogation, petitioner admitted setting the two fires in question.

Petitioner allegedly wrote and signed a statement which said:

> Lawrence Krieger 12:36 P.M.
> 61 Brill St. Newark Feb. 25, 1980
>
> I'm really sorry for what happen at Sealy Mattress Company Im the one who set the fires on Jan. 29 and Feb. 12. I will never do anything like this again, I never did anything like this before and

> Im ashamed. Everything I have written and said is 100% truth, Im sorry.
>
> Lawrence Krieger (signed)

Some ten minutes later, petitioner purportedly executed an additional statement:

> I have read the above and it is all the truth. No one have forced me to write this, or made any promises to me. I was treated very fairly by Richard Falcone. I have no complaints about what has happen hear today.
>
> Lawrence Krieger (signed)
> 12:46 p.m.

Falcone subsequently brought petitioner to Investigator Hyslop's office where the interrogation continued, culminating in a second signed confession, the entire inculpatory portion of which was reproduced in the Appellate Division opinion, and went as follows:

> Q. Knowing and understanding your rights, and knowing you are not under arrest or custody, do you wish to give us a statement about a fire which occurred on January 29, 1980 and a fire that occurred on February 12, 1980? A. Yes.
>
> Q. Can you tell me in your own words the circumstances leading up to the fire which occurred on January 29, 1980? A. Well I was under pressure a lot of problems and I was constantly told I was irresponsible. I punched in. I went into the sewing room to see if anything had to be brought up stairs. There wasn't anything at the

time. So I walked up stairs went into the store room and I had a cigarette and I was playing with a book of matches. I dropped them on the floor then the fire started. And I grabbed the fire extinguisher to put it out. No harm intended. Then other people grabbed fire extinguishers until the fire dept. arrived, then I went downstairs to help cover the machines and the materials so they wouldn't be damaged. Then we cleaned up and work went on as usual.

Q. What kind of pressure are you under? A. Many family problems, non-understanding of the things I do, lack of my ability and responsibility.

Q. On January 29, 1980, what time did you punch in to work? A. About five to seven. (a.m.)

Q. How soon after punching in did you go to the store room? A. Twenty minutes.

Q. Approximately what time did you set the fire? A. 7:30 a.m.

Q. You stated previously, that you were playing with a book of matches. Why? A. I dropped them on the floor to start the paper on fire to burn the matts.

Q. In what part of the store room did you set the fire? A. The middle.

Q. Did you know before you got to work that you were going to start a fire? A. Not really. It was on my mind.

Q. When did you first plan to start the fire and why? A. The day before it happened, did it for recognition and a form of responsibility cause I put the fire out before it spread to any great deal of damage. No harm was intended.

Q. Do you want a cup of coffee or something to drink at this time or go to the men's room? A. Just a cigarette. (At this time, Inv. Hyslop gave him a cigarette).

Q. When you planned the fire, did you also plan to put it out? A. Yes, immediately.

Q. Previously, you stated that you wanted to receive recognition. Why? A. I felt as if no body knew I was there. And I was just running around doing things that no one really appreciated.

Q. From whom do you want to get this recognition? A. Any superior.

Q. Did you feel by starting the fire and subsequently extinguishing the fire that you would gain this recognition? A. I don't know but I was hoping to.

Q. At this time would you like to add anything else regarding the fire on January 29, 1980? A. Only that there was absolutely no harm to any one or anything except the mats.

Q. Again can you tell me in your own words the circumstances which were involved regarding the fire at Sealy Mattress Co. on February 12,

1980? A. I punched in. I went to the sewing room to see if anything was to be brought upstairs. I brought a cart of materials up on the elevator. I talked to Wyatt. I proceeded to walk down stairs. Still with family problems, and work problems regarding my responsibility I lit a cigarette, put a book of matches on an inside ledge, placing the cigarette down on the same ledge, I walked to the third floor. I thought I heard someone coming from upstairs. I spoke to Willie and came immediately downstairs to extinguish the fire. Again with no harm intended.

Q. Why did you start this second fire on February 12, 1980? A. Hoping for possible recognition of the company and home.

Q. At approximately what time did you set this fire? A. About 8:00 a.m.

Q. In what room did you place the cigarette and matches on the ledge? A. It was in the store room where the mats are kept.

Q. Did anyone besides yourself have anything to do with setting the fire on January 29, 1980 or February 12, 1980? A. No.

Q. Did you discuss this with anyone before you set the fires? A. No.

Q. When did you start working at Sealty Mattress Co.? A. January, I don't know if it was the second of third. I think it was the second, 1980.

Q. Did you ever set any other fires either at Sealy Matress Co. or anywhere else? A. Never.

Q. On February 12, 1980 did you know before you got to work that you were going to start a fire? A. Yes.

Q. When did you first plan to start the fire? A. The night before and that morning. Again, with no harm intended.

Q. Previously in your statement, you state that you spoke to Willie. Who is Willie? A. He's in charge of foam rubber at Sealy.

Q. Why did you put a lit cigarette and a book of matches on the ledge in the store room? A. To start a small fire.

Q. How would this start the fire? A. The cigarette would start the book of matches on fire, causing a bundle of mats to catch.

Q. Is there anything that you would like to add regarding the fire on February 12, 1980? A. I just want it to be understood that there was no harm intended or a great deal of damages to occur.

The trial commenced with a *Miranda* hearing at which Hyslop, Falcone and petitioner testified. Petitioner denied the truth of the admission, explaining that his confession was produced by Falcone's interrogative techniques which overrode his will and induced him to accept Falcone's suggestions of guilt and motive. The trial judge nevertheless found the confession to be voluntary and hence admissible. The trial proper then proceeded.

The confession constituted the only proof of petitioner's guilt. The State produced three witnesses. The first to testify was Harold Naiman, manager and part owner of the Sealy Mattress Co. He testified that at approximately 7:20 a.m., while speaking with his foreman, he heard a message on the plant intercom loudspeaker that there was a fire on the second floor, which was used for storing manufacturing materials. Naiman then went to the second floor, where he saw some employees attempting to put out the fire with extinguishers. The fire had started in bales of cortex pads made out of coconut fibers. The second floor, on which the fire occurred, was a U-shaped open area approximately 40 feet by 110 feet. When Naiman arrived on the second floor, he observed bales had been piled against one of the walls and that the hottest part of the fire was about ten feet from one of the walls.

The bales were taken outside and broken open. If they were still on fire, they were doused with water. The building was not damaged by the fire, but there was water damage to goods on the first floor. Naiman stated that it took the remainder of the day to get the damage cleaned up.

On January 29th, petitioner, who was one of the 70 employees, had punched in at 6:58 a.m.

Naiman was also at work on February 12, 1980. Upon his arrival, the fire department was already present, attempting to extinguish a fire on another part of the second floor, in bundles of hair pads.

With regard to the location of the materials involved in the second fire, Naiman testified that the bulk of the fire was in the "whole middle (area)." These materials were also removed from the building, which had again sustained water, but no fire damage.

On February 12th, petitioner was also in the building, having punched in at 6:53 a.m.

According to Naiman, petitioner's job, which he described as a "medium level position", was to check schedules and coordinate box spring covers with the daily schedules. After checking, Mr. Krieger would then bring the completed loads up to the second floor by elevator and disburse them to the box spring department. Other than petitioner's spotty attendance record, Naiman had had no other problems with him.

Finally, Naiman stated that at the times of both the fires there were a number of people working on the second floor.

William Shortway investigated the January 29th fire for the Paterson Fire Department. In the course of his investigation, he attempted to ignite the bales of cortex pads with a cigarette. The cigarette failed to ignite the pads. A lighted match, however, was able to ignite the pads. Shortway was, however, unable to identify a specific cause for the fire. Additionally, although he believed that the fire was started by "human hand", he was unable to determine whether the act had been intentional or accidental. Finally, Shortway found no burned matches or other sources of ignition.

Vittorio Diddio investigated the February 12th fire for the Paterson Fire Department. Diddio subsequently attempted to ignite the material involved in the second fire with both a lighted cigarette and a match. The cigarette caused the material to smolder and it was his opinion that it may have sustained a fire. An open flame ignited the material easily and it burnt "quite rapidly".

Without stating any reasons, Diddio testified that his opinion was that the fire was set intentionally (as opposed to accidentally) set by a human being.

Finally, Diddio stated that the alarm had been received in the Paterson Fire Department at 7:03 a.m. on February 12th.

Trial counsel for petitioner raised the constitutional issue at the conclusion of the State's case by moving for a judgment of acquittal on the grounds that there was no corroboration for the confession (24a-30a).

The trial court denied the motion. At the conclusion of the trial, the jury found petitioner guilty on both counts.

The issue presented in this petition was addressed by the Superior Court of New Jersey, Appellate Division, and in fact formed the basis for that court's reversal of the trial court conviction.

The same issue was presented to the New Jersey Supreme Court which ruled, as previously indicated, in a 4-3 decision that there had been sufficient corroboration of the confession to put the case to the jury. The reasons given were those set forth in the Appellate Division dissenting opinion.

REASONS FOR GRANTING THE WRIT

This Court should grant certiorari in this instance because the state and federal courts have a compelling need for guidance regarding the type and quantum of independent corroboration required to be introduced into evidence in order to substantiate a confession, so that a conviction founded principally upon such confession will comply with constitutionally guaranteed rights to due process of law. The case at hand is an exemplary vehicle for this Court to provide such guidance.

In a 4-3 decision the New Jersey Supreme Court, by way of an Appellate Division dissenting opinion, has affirmed that the test on a motion for judgment of acquittal on grounds of lack of corroboration is:

> . . . whether there is *any* legal evidence, apart from the confession of facts and circumstances, from which the jury might draw an inference that the confession is trustworthy. (20a).

Citing State v. Lucas, 30 N.J. 37, 62 (1959) (emphasis added).

In *Smith v. United States,* 348 U.S. 147, 75 S. Ct. 194 (1954), this Court affirmed the general rule that an accused may not be convicted on his own uncorroborated confession. 348 U.S. at 152, 75 S. Ct. at 197, *citing Warszower v. United States,* 312 U.S. 342. In *Smith,* the Court was faced with a crime where no tangible injury could be isolated as a *corpus delicti, i.e.,* tax evasion. It was noted that the corroboration rule initially served only to establish the fact that *someone* had indeed committed a crime. However, once the existence of the crime was established, the guilt of the accused could be based on his own otherwise uncorroborated confession. In *Smith,* the Court noted that as to the crime of tax evasion, it could not be shown that the crime had been committed without identifying the accused.

Given the choice of broadening the scope of protection accorded by the corroboration rule, or finding the rule inapplicable, the Court chose to apply the rule to crimes in which there is no tangible *corpus delicti.* 348 U.S. at 153-54, 75 S. Ct. at 198. After thus emphasizing the importance of the safeguards which the corroboration rule accords, the Court went on to discuss the quantum of corroboration necessary to substantiate the existence of the crime charged. The Court stated:

> It is agreed that the corroborative evidence does not have to prove the offense beyond a reasonable doubt, or even by a preponderance, as long as there is *substantial* independent evidence that the offense has been committed, and the evidence as a whole

> proves beyond a reasonable doubt that defendant is guilty.

(Emphasis added.) 348 U.S. at 156, 75 S. Ct. at 199.

The Court found that all elements of the offense must be established by independent evidence or corroborated admissions, but that one available mode of corroboration is for independent evidence to bolster the confession itself and thereby prove the offense "through" the statements of the accused. The Court went on to say:

> Under the above standard the Government may provide the necessary corroboration by introducing *substantial* evidence, apart from petitioner's admissions, tending to show that petitioner willfully understated his taxable income.

(Emphasis added.) 348 U.S. at 157, 75 S. Ct. at 199. Therefore, the safeguards of the corrorobation rule would be preserved where the government utilized defendant's confession to prove essential elements of the offense, but only where the buttressing independent corroborative evidence is "substantial". In accord is *Opper v. United States,* 348 U.S. 84, 75 S. Ct. 158 (1954). *Opper* also held that corroborative evidence need not be sufficient in itself to establish the *corpus delicti.* In doing so it noted however:

> It is necessary, therefore, to require the Government to introduce *substantial* independent evidence which would tend to establish the trustworthiness of the statement.

(Emphasis added.) *Opper v. United States,* 348 U.S. at 93, 75 S. Ct. at 164.

The New Jersey Supreme Court has adopted a standard for corroboration which dilutes the expansive protections accorded by this Court. By inquiring "whether there is *any* legal evidence, apart from the confession of facts and circumstances, from which the jury might draw an inference that the confession is trustworthy", the New Jersey court has abandoned the "substantial independent evidence" test enunciated by this Court. The New Jersey court was divided 4-3 as to whether the corroboration offered in support of the subject confession was sufficient. Clearly, the New Jersey court utilized an improper, less protective standard in reaching the conclusion that there was sufficient corroboration.

The three dissenting justices would have affirmed the decision of the Appellate Division below. An examination of that opinion discloses the substance of the confession, which was the only proof offered by the State of petitioner's guilt. In a well-reasoned opinion, the Appellate Division majority traced the history of the corroboration rule. In light of the principles upon which the rule is founded, the Appellate Division majority and three dissenting Supreme Court justices found the corroboration deficient. It is clear that the dissenting justices were looking for "substantial" independent evidence, and were thereby utilizing the correct standard. The dissent noted glaring deficiencies in the corroboration of the confession. Among these deficiencies were:

(a) The lack of identification of the materials which were burned;

(b) Inconsistencies between the location of the burned materials as set forth in the confession and the corroboration;

(c) The lack of proof by the State that the technique set forth in the confession was even capable of igniting the fires;

(d) Inconsistencies in the timing of the events as set forth in the confession and corroboration;

(e) A total lack of corroboration of key factors, such as petitioner's movements about the location, his conversations and his efforts to extinguish the fires. These were all adduced through the confession and could have been easily corroborated by the State, but were not;

(f) A lack of corroboration as to petitioner's motive.

The dissent, via the Appellate Division majority, was clearly looking for the kind of substantial independent evidence which this Court has deemed necessary to establish the trustworthiness that a confession must attain if it is to be the sole basis of the State's proof against him. It cited *State in Interest of B.D.*, 110 N.J. Super. 585 (App. Div. 1969), *aff'd o.b.*, 56 N.J. 325 (1970) for the proposition that the confession must contain a "wealth of independently corroborated detail . . . and that significant details therein stated could have been known only to a participant in the crime." (18a).

This proper standard was not employed in petitioner's case. Rather, the New Jersey Supreme Court majority, through the Appellate Division dissent, found the State's proofs sufficient when viewed against the "any legal evidence" standard set forth above. According to the majority the State proved:

(a) Two fires were purposely set at the Sealy Mattress Company;

(b) That defendant was on the premises on the dates and at the times of the fires;

(c) That the fires occurred in an area of the premises to which petitioner had access;

(d) That the materials involved could be ignited by a match, and the fires were set by human hand;

(e) That employees utilized fire extinguishers to put out the fires;

(f) That petitioner's attendance record was not good and his job was in jeopardy at the time.

Petitioner respectfully submits that there was nothing in the corroboration offered by the State that was not known to any employee-observer of the incident, or which could not also apply to numerous other employees present on those dates. The corroboration far from being substantial, was totally circumstantial, and addressed to statements in the confession which, though ostensibly corroborated, added nothing to the belief in the trustworthiness of the confession. The New Jersey Supreme Court majority opinion adopted the Appellate Division dissent, which said, in reference to such arguments:

> They simply raise issues of fact as to corroboration of the confession, which are properly to be resolved by the jury (24a).

Petitioner suggests that a confession should not go to the jury unless, as a matter of law, it has been determined that it has been sufficiently corroborated by *substantial* evidence, and its trustworthiness determined. It was error for this confession to go to the jury replete with inconsistencies, on the ground that the jury would determine whether the corroboration was sufficient.

Finally, this Court should instruct the Supreme Court of New Jersey that a corroborated confession itself will be insufficient to convict a defendant where the confession on its face, and the State's other proofs, do not prove beyond a reasonable doubt that he committed the crime.

Regarding the fire of February 12, 1980, the confession sets forth only that petitioner put a lit cigarette on a ledge, as well as a book of matches, and walked to the third floor (8a). There is nothing in this statement that conclusively proves petitioner started the ensuing fire. There is nothing in this statement which even indicates: that the lit cigarette and matches were in proximity to one another on the ledge; that the matches ever caught fire; that there was combustible material on the ledge; that the cigarette and matches ever came in contact with the materials which subsequently burned, or; if in fact the burned materials were capable of being ignited in this fashion. At best, petitioner's confession indicates his *belief* that he started this fire.

It was just this consideration that prompted the corroboration rule in the first place. *Smith v. United States, supra,* 348 U.S. at 153, 75 S. Ct. at 197. It is the knowledge that confessions can be false, erroneous or involuntary that "justify a restriction on the power of the jury to convict, for this experience with confessions is not shared by the average juror." *Id.*

In the present instance, petitioner's confession, the sole case against him, does not prove beyond a reasonable doubt that he committed these crimes, but at best that he believes he did, or was coerced into admitting he did.

CONCLUSION

This Court should grant certiorari and review petitioner's case on the merits. The New Jersey Supreme Court has decided petitioner's case based upon an incorrect standard, which is at odds with that standard enunciated by this Court. In doing so, the State has substantially abrogated those safeguards accorded to petitioner by the Fifth and Fourteenth Amendments to the Constitution of the United States.

For these foregoing reasons, petitioner respectfully requests that a writ of certiorari be granted.

Respectfully submitted,

DENNIS ALAN CIPRIANO
Attorney for Petitioner

Dated: July 6, 1984

APPENDIX

OPINION OF THE SUPREME COURT OF NEW JERSEY DATED MAY 16, 1984

SUPREME COURT OF NEW JERSEY
A-100 September Term 1983

STATE OF NEW JERSEY,

Plaintiff-Appellant,

v.

LAWRENCE KRIEGER,

Defendant-Respondent.

Argued May 1, 1984 — Decided May 16, 1984

On appeal from the Superior Court, Appellate Division, whose opinions are reported at ____ *N.J. Super.* ____ (1983).

Gary H. Schlyen, Assistant Prosecutor, argued the cause for appellant (*Joseph A. Falcone,* Passaic County Prosecutor, attorney; *Margaret Ann F. Mullins,* Assistant Prosecutor, of counsel and on the brief).

Robert A. Jacobson, Designated Counsel, argued the cause for respondent (*Joseph H. Rodriguez,* Public Defender, attorney).

Opinion of the Supreme Court of New Jersey

PER CURIAM

The judgment of the Appellate Division is reversed, substantially for the reasons expressed in the dissenting opinion of Judge Michels, reported at ____ *N.J. Super.* ____, ____ (1983).

Chief Justice Wilentz and Justices Schreiber, O'Hern and Garibaldi join in this opinion.

Justices Clifford, Handler and Pollock have filed a separate dissenting opinion.

DISSENTING OPINION OF THE SUPREME COURT OF NEW JERSEY

SUPREME COURT OF NEW JERSEY
A-100 September Term 1983

STATE OF NEW JERSEY,

Plaintiff-Appellant,

v.

LAWRENCE KRIEGER,

Defendant-Respondent.

CLIFFORD, HANDLER, and POLLOCK, JJ., dissenting:

We would affirm the judgment of the Appellate Division substantially for the reasons expressed in the opinion of the majority of that court, reported at ____ *N.J. Super.* ____ (1983).

OPINION OF THE SUPERIOR COURT OF NEW JERSEY FILED FEBRUARY 28, 1983

NOT FOR PUBLICATION WITHOUT THE APPROVAL OF THE COMMITTEE ON OPINIONS

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-2943-80-T4

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

LAWRENCE KRIEGER,

Defendant-Appellant.

Argued January 4, 1983 — Decided Feb. 28, 1983.

Before Judges Michels, Pressler and Trautwein.

On appeal from the Superior Court, Law Division, Passaic County.

Robert A. Jacobson, Designated Counsel, argued the cause for the appellant (Joseph H. Rodriguez, Public Defender, attorney).

Margaret Ann F. Mullins, Assistant Prosecutor, argued the cause for the respondent (Joseph A. Falcone, Passaic County Prosecutor, attorney).

Opinion of the Superior Court of New Jersey

The opinion of the majority was delivered by PRESSLER, J.A.D.

Defendant Lawrence Krieger, tried to a jury, was convicted of two charges of arson contrary to *N.J.S.A.* 2C:17-1(b) and was sentenced to concurrent indeterminate terms.

We reverse the convictions, having concluded that the trial judge erred in denying defendant's motion for a judgment of acquittal at the close of the State's case. We are in full agreement with the argument of defendant then made that there was insufficient evidence adduced by the State to warrant a conviction since the only evidence of guilt, direct or circumstantial, was a confession by defendant which lacked independent corroboration adequate to generate a belief in its trustworthiness.

Defendant, then 20 years old, was first employed by Sealy Mattress Company in Paterson as a production foreman on January 2, 1980. He was a Newark high school graduate, resided in Newark, had applied for a position as a Newark fireman and was on a waiting list for appointment thereto. Sealy occupied a three-story manufacturing facility. Located on the second story was a large storage room in which various materials used for the production of mattresses were kept. The room was a large open area, approximately 40 feet by 110 feet in size, which had to be traversed in order to reach a production area on the same floor. It appears that the main sewing area was on the first floor and apparently production activities involving foam rubber were conducted on the third floor. The plant employed about 70 people, all of whom began their work day at 7:00 A.M. Two or three of the employees worked regularly in the storage room and about

25 worked in the second floor production area. Defendant's duties required him to move about all over the plant and took him many times daily through the storage room.

The first of the fires occurred on the morning of January 29, 1980, and the second occurred on the morning of February 12, 1980. On each occasion a bale of material in the storage room had been ignited, the fire and its damage were localized, the fire was quickly brought under control by employees using fire extinguishers, and the Paterson Fire Department responded, completed the fire extinguishing process, and investigated. The investigations of both fires indicated to the fire officials that they were of incendiary origin, that is, set by human agency, although there was no indication of or opinion about the actual manner in which they had been set or, at least as to the first fire, whether it had been accidentally or intentionally set.

Defendant, who was at work on both occasions, was routinely questioned at the plant on February 14, two days after the second fire, by two investigators from the Passaic County Prosecutor's office, Investigators Robert Daniels and Arthur Hyslop. He was given *Miranda* warnings, was asked about the fires, and denied any knowledge thereof. He also agreed to submit voluntarily to a polygraph test, which was scheduled for February 25. On the scheduled date, defendant appeared at the prosecutor's office and was introduced by Hyslop, on that day in charge of the investigation because of Daniels' absence, to Officer Richard Falcone, the prosecutor's polygraph operator.

Defendant and Falcone were alone together for about an hour. It is undisputed that approximately the first half hour of

the session was consumed by preliminary procedures including Falcone's giving of *Miranda* warnings, his explanation to defendant of the way the polygraph machine worked, and the actual administration of a "control" test. It is further undisputed that at the conclusion of these preliminaries, the polygraph testing was terminated and defendant, at Falcone's encouragement, confessed to setting both fires. What is, however, very much disputed is the nature of Falcone's encouragement, the record supporting to some degree at least, defendant's assertion of psychological coercion.

In any event, after defendant made his admission to Falcone, Falcone took him back to Hyslop for formal interrogation. Falcone first, however, elicited the following written statement from defendant:

> Lawrence Krieger
> 61 Brill St. Newark 12:36 P.M.
> Feb. 25, 1980
>
> I'm really sorry for what happen at Sealy Mattress Company. I'm the one who set the fires on Jan. 29 and Feb. 12. I will never do anything like this again, I never did anything like this before and I'm ashamed. Everything I have written and said is 100% truth, I'm sorry.
>
> Lawrence Krieger [signed]
>
> I have read the above and it is all the truth. No one have forced me to write this, or made any

promises to me. I was treated very fairly by Richard Falcone. I have no complaints about what has happen hear today.

Lawrence Krieger [signed]
12:46 P.M.

Hyslop's interrogation of defendant, which was again preceded by *Miranda* warnings, culminated in defendant's second signed confession. This confession is a four-page document in question and answer form, the entire inculpatory portion of which is as follows:

Q. Knowing and understanding your rights, and knowing you are not under arrest or custody, do you wish to give us a statement about a fire which occurred on January 29, 1980 and a fire that occurred on February 12, 1980?

A. Yes.

Q. Can you tell me in your own words the circumstances leading up to the fire which occurred on January 29, 1980?

A. Well I was under pressure a lot of problems and I was constantly told I was irresponsible. I punched in. I went into the sewing room to see if anything had to be brought up stairs. There wasn't anything at the time. So I walked up stairs went into the store room and I had a cigarette and I was playing with a book of matches. I dropped them on the floor then the fire started.

And I grabbed the fire extinguisher to put it out. No harm intended. Then other people grabbed fire extinguishers until the fire dept. arrived, then I went downstairs to help cover the machines and the materials so they wouldn't be damaged. Then we cleaned up and work went on as usual.

Q. What kind of pressure are you under?

A. Many family problems, non-understanding of the things I do, lack of my ability and responsibility.

Q. On January 29, 1980, what time did you punch in to work?

A. About five to seven. (a.m.)

Q. How soon after punching in did you go to the store room?

A. Twenty minutes.

Q. Approximately what time did you set the fire?

A. 7:30 a.m.

Q. You stated previously, that you were playing with a book of matches. Why?

A. I dropped them on the floor to start the paper on fire to burn the matts.

Q. In what part of the store room did you set the fire?

A. The middle.

Q. Did you know before you got to work that you were going to start a fire?

A. Not really. It was on my mind.

Q. When did you first plan to start the fire and why?

A. The day before it happened, did it for recognition and a form of responsibility cause I put the fire out before it spread to any great deal of damage. No harm was intended.

Q. Do you want a cup of coffee or something to drink at this time or go to the men's room.

A. Just a cigarette. (At this time, Inv. Hyslop gave him a cigarette).

Q. When you planned the fire, did you also plan to put it out?

A. Yes, immediately.

Q. Previously, you stated that you wanted to receive recognition. Why?

A. I felt as if no body knew I was there. And I was just running around doing things that no one really appreciated.

Q. From whom do you want to get this recognition?

A. Any superior.

Q. Did you feel by starting the fire and subsequently extinguishing the fire that you would gain this recognition?

A. I don't know but I was hoping to.

Q. At this time would you like to add anything else regarding the fire on January 29, 1980?

A. Only that there was absolutely no harm to any one . . anything except the mats.

Q. Again can you tell me in your own words the circumstances which were involved regarding the fire at Sealy Mattress Co. on February 12, 1980?

A. I punched in. I went to the sewing room to see if anything was to be brought upstairs. I brought a cart of materials up on the elevator. I talked to Wyatt. I proceeded to walk down stairs. Still with family problems, and work problems regarding my responsibility I lit a cigarette, put a book of matches on an inside ledge, placing the cigarette down on the same ledge, I walked to the third floor. I thought I heard someone coming from upstairs. I spoke to Willie and came immediately downstairs to extinguish the fire. Again with no harm intended.

Q. Why did you start this second fire on February 12, 1980?

A. Hoping for possible recognition of the company and home.

Q. At approximately what time did you set this fire?

A. About 8:00 a.m.

Q. In what room did you place the cigarette and matches on the ledge?

A. It was in the store room where the mats are kept.

Q. Did anyone besides yourself have anything to do with setting the fire on January 29, 1980 or February 12, 1980?

A. No.

Q. Did you discuss this with anyone before you set the fires?

A. No.

Q. When did you start working at Sealy Mattress Co.?

A. January, I don't know if it was the second or third. I think it was the second, 1980.

Q. Did you ever set any other fires either at Sealy Mattress Co. or anywhere else?

A. Never.

Q. On February 12, 1980 did you know before you got to work that you were going to start a fire?

A. Yes.

Q. When did you first plan to start the fire?

A. The night before and that morning. Again, with no harm intended.

Q. Previously in your statement, you state that you spoke to Willie. Who is Willie?

A. He's in charge of foam rubber at Sealy.

Q. Why did you put a lit cigarette and a book of matches on the ledge in the store room?

A. To start a small fire.

Q. How would this start the fire?

A. The cigarette would start the book of matches on fire, causing a bundle of mats to catch.

Q. Is there anything that you would like to add regarding the fire on February 12, 1980?

A. I just want it to be understood that there was no harm intended or a great deal of damages to occur.

The trial commenced with a *Miranda* hearing at which Hyslop, Falcone and defendant testified. Defendant denied the truth of the admission, explaining that his confession was produced by Falcone's interrogative techniques which overrode his will and induced him to accept Falcone's suggestions of guilt and motive. The trial judge nevertheless found the confession to be voluntary and hence admissible. The trial proper then proceeded.

It is perfectly clear and the State does not argue to the contrary that the confession constituted the only proof of defendant's guilt. In this posture it is also clear that if the confession was insufficiently corroborated, he was entitled to a judgment of acquittal. The applicable principle of law in this jurisdiction was settled by *State v. Lucas,* 30 *N.J.* 37, 56 (1959), in which the Supreme Court opted for the rule that where a confession is offered for the truth of its contents, "the State must introduce independent proof of facts and circumstances which strengthen or bolster the confession and tend to generate a belief in its trustworthiness, plus independent proof of loss or injury * * *." Thus, concluded the Court in *Lucas,*

> On motion to direct an acquittal on grounds of lack of corroboration the trial court must determine whether there is any legal evidence, apart from the confession of facts and circumstances, from which the jury might draw an inference that the confession is trustworthy. *Id.* at 62.

See also *State v. Ordog,* 45 *N.J.* 347, 365 (1965), *cert. den.* 384 *U.S.* 1022, 86 *S. Ct.* 1942, 16 *L. Ed. 2d* 1025 (1966); *State v. Fauntleroy,* 36 *N.J.* 379, 399 (1962); *State v. Johnson,* 31 *N.J.* 489, 502-503 (1960).

The corroboration rule is, of course, predicated on the assumption that a confession. albeit voluntary, is not necessarily true. The purpose of the rule, therefore, as cogently and succinctly explained by the Supreme Court is "to avoid the danger of convicting a defendant solely out of his own mouth of a crime that never occurred or a crime committed by someone else." *State*

v. Johnson, op. cit., supra. That danger, of course, exists wholly apart from the question of the voluntariness of the confession. Hence in our view, the post-*Lucas* development of the constitutional predicates of *Miranda* warnings is entirely irrelevant to the corroboration issue. Meticulous attention by law enforcement officials to a defendant's *Miranda* rights may well result in foreclosure of his practical opportunity to challenge the voluntariness of the ensuing confession but it does not substitute for or replace the necessity for corroboration *aliunde* of the confession.

In the light of these principles, we are constrained to conclude not only that the confession here was inadequately corroborated to meet the trustworthiness standard, but also that its details were both so sparse and so contradicted by the State's undisputed evidence as to generate an affirmative belief in its untrustworthiness.

It was proved by the State that defendant, together with 70 other employees, was on the premises when the fire occurred. Corroboration of the confession virtually ends with that fact.

Addressing first the facts recited in the confession respecting the first fire, we note at the outset that defendant did not and was not asked to identify the specific material which was ignited beyond the statement that "matts" were burned. The bulk of the material in the storeroom consisted of mats or pads of one sort or another, and apparently on both occasions the fire fighters removed the bales of burnt mats to an outdoor yard where they were in full view of all employees. Surely, had defendant actually ignited the bale of material he would have known what they were

because his duties required him to deliver designated materials on a written list to various production areas. The material which was ignited the second time was a stack of hog-hair and horse-hair pads, entirely different materials than were burned the first time and which, because of their composition, gave off a peculiarly rancid odor. Defendant was never asked to give any identification of the kind of materials burned in the second fire although, as noted he surely would have known what they were.

Even more troublesome to us than the lack of identification of the burned materials is the information regarding their location. When asked during his interrogation to state the part of the storeroom in which the first fire was set, defendant's answer was "the middle." Yet, according to the testimony of the plant manager, the burnt cortex pad bales had been piled against the wall and "about ten feet from the wall there seemed to have been the hottest part of the fire." As to the second fire, the confession relates only that defendant placed a lit cigarette on an inside ledge of the storeroom next to a book of matches. There was no proof at trial, however, of the fact that there was a ledge in the storeroom at all, or if there was, where in relation to the ledge the hair pads were located. Thus, there was absolutely no proof that the briefly described *modus operandi* could have started that fire.

There are problems as well with defendant's confession statement explaining the manner in which the fires were set. As to the second fire, we are satisfied that without defendant having demonstrated how he placed the lit cigarette and the book of matches in relation to each other, it is not even evident that the burning of the cigarette would necessarily have ignited the book of matches or that, if it had, the burning matchbook would have fallen off the ledge, resulting in the ignition of the pads. Of further significance in respect of *modus operandi* is the fact that in his

initial admission to Falcone defendant claimed to have set the first fire by tossing a lighted cigarette onto the bale. He gave the further matchbook explanation only after Falcone had informed him that a lit cigarette alone could not have caused the blaze.

Perhaps, however, the most troublesome aspect of the confession relates to defendant's statements regarding the timing of the second fire. Defendant explained that he "punched in," went to the first floor sewing room to see if materials had to be brought upstairs, and then took a cart of materials from the first floor to the second floor by elevator. Presumably he delivered this cart to Wyatt, who was an employee working on the second floor production area. After engaging in a conversation with Wyatt, he walked back downstairs, brooding about his personal problems. Of necessity, although he did not say so, he then walked back to the second floor where he finally placed his incendiary material on the ledge. Then he walked up to the third floor where he engaged in conversation with Willie, the foam rubber worker. The fire then started and he rushed downstairs to extinguish it. It was his further statement that he had set that fire at about 8:00 A.M. The State's proofs, however, showed that on the day of the second fire, defendant "punched in" his time card at 6:53 A.M. and the fire department received the alarm at 7:30 A.M. That would leave a period of 10 minutes in which defendant performed all the described traversals by stairs and elevator, picked up and delivered a cart of material, conversed with two separate co-employees, and arranged the cigarette and matchbook device. Also, during those ten minutes, the cigarette would have had to have burned down sufficiently to ignite the matchbook, the matchbook would have had to ignite the pads, and the burning of the pads would have to have progressed sufficiently to start the sprinkler system which triggered the alarm to the fire station. Not only is that scenario in our view inherently and *prima facie*

unlikely, but there was absolutely nothing adduced by the State to corroborate any of defendant's movements or the time normally consumed thereby or his alleged conversations with either of the co-employees, since neither Wyatt nor Willie testified. Indeed, there wasn't even any corroboration of defendant's statement that he had been the one or at least one of the several employees who had first attacked the fires with fire extinguishers.

Finally, there was no corroboration of the alleged motive. Although the plant manager, on the State's direct examination, suggested that defendant's attendance record was not satisfactory, he did admit on cross-examination that at least as of the time of the fires, he was not personally familiar with defendant's work record since the evaluation normally made following a probationary employment still had not taken place. No other plant supervisor or co-employee testified.

The judicial decisions of this State, including *Lucas* and those decisions heretofore cited following *Lucas,* all placed great emphasis on the wealth of the independently corroborated detail included in the confession being considered and on the fact that significant details therein stated could have been known only to a participant in the crime. See also *State in Interest of B.D.,* 110 *N.J. Super.* 585 (App. Div. 1969), aff'd o.b. 56 *N.J.* 325 (1970). This confession on the other hand is characterized by a singular paucity of detail, the disclosure of no special or "inside" information regarding the crime or its circumstances, virtually no corroboration of the minimal detail which is set forth, and, most importantly, critical contradictions of undisputed facts. A confession by itself, voluntary or not, cannot take the place of adequate police investigation and the presentation of adequate trial proofs. That is the policy of the corroboration rule, and that policy, in our view, was abrogated here. In sum, there was no

demonstration by independent proof of the trustworthiness of the confession. Defendant was, therefore, entitled to the judgment of acquittal for which he moved.

We note that defendant raises other challenges to the conviction, including the ruling on voluntariness of the confession, the prosecutor's cross-examination of defendant regarding his refusal to request a subsequent completion of the polygraph test, and the alleged excessiveness of sentence. We are satisfied that these issues are clearly without merit. R. 2:11-3(e)(2).

The judgment of conviction is reversed and the matter remanded for entry of a judgment of acquittal.

DISSENTING OPINION OF THE SUPERIOR COURT OF NEW JERSEY

NOT FOR PUBLICATION WITHOUT THE APPROVAL OF THE COMMITTEE ON OPINIONS

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-2943-80 T4

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

LAWRENCE KRIEGER,

Defendant-Appellant.

MICHELS, P.J.A.D., dissenting: Feb. 28, 1983

I respectfully disagree with my colleagues' holding that the trial court erred in denying defendant's motion for a judgment of acquittal at the close of the State's case because "the only evidence of guilt, direct or circumstantial, was a confession by defendant which lacked independent corroboration adequate to generate a belief in its trustworthiness." The test on a motion for judgment of acquittal on grounds of lack of corroboration is, as clearly stated by the majority, "whether there is any legal evidence, apart from the confession of facts and circumstances, from which the jury might draw an inference that the confession is trustworthy." *State v. Lucas,* 30 *N.J.* 37, 62 (1959). I am convinced from a study of the trial transcripts that the State's proofs were sufficiently corroborative to present a question for

the jury as to the trustworthiness of defendant's confession, and therefore that the denial of defendant's motion for a judgment of acquittal at the conclusion of the State's proofs was warranted.

The well established rule in New Jersey concerning the quantum of proof independent of the confession that the State must introduce before a confession may be considered evidential is stated in *State v. Lucas, supra,* 30 *N.J.* at 56, to be that:

> [T]he State must introduce independent proof of facts and circumstances which strengthen or bolster the confession and tend to generate a belief in its trustworthiness, plus independent proof of loss or injury. [30 *N.J.* at 56].

Accord, *State v. Ordog,* 45 *N.J.* 347, 363 (1965), *cert. den.* 384 *U.S.* 1022, 86 *S. Ct.* 1942, 16 *L. Ed.* 2d 1025 (1966); *State v. Johnson,* 31 *N.J.* 489, 502 (1960); *State v. Guild,* 10 *N.J.L.* 163, 185-187 (Sup. Ct. 1828). The reason for this rule "is to avoid the danger of convicting a defendant solely out of his own mouth of a crime that never occurred or a crime committed by someone else." *State v. Johnson, supra,* 31 *N.J.* at 502-503.

Here, the State proved beyond a reasonable doubt that two fires were purposely set on the second floor of the Sealy Mattress Company in Paterson, New Jersey. Defendant admitted setting both of them. In his confession, defendant stated that he set the first fire at approximately 7:30 a.m. on January 29, 1980, and the second at approximately 8:00 a.m. on February 12, 1980. He described where he set each fire, how he set each fire, and, very generally, what was burned in each fire. He also described the efforts he made to extinguish both fires almost immediately after setting them by using fire extinguishers and the limited amount of damage caused by each fire.

Dissenting Opinion

The independent proofs presented in the State's case established that the defendant was on the premises at the time each fire was set. The company time cards for January 29, the date of the first fire, show that defendant punched in for work at 6:58 a.m. The Paterson Fire Department's records show that its fire alarm office was notified of the first fire at 8:06 a.m. With respect to the second fire, the time cards for February 12 showed that defendant punched in at 6:53 a.m. and the fire department records established that the alarm came in at 7:03 a.m. Furthermore, Harold Naiman, the plant manager, testified that the fires occurred in a second-floor storeroom that was an area of the plant that defendant would have gone through perhaps 15 or 20 times a day to carry out his usual duties. Thus, the State's proofs placed defendant in the building at the time of each fire and established that the fires were set in an area of the plant in which defendant would periodically perform his duties.

Defendant also stated that he set the first fire by dropping a book of lighted matches on the floor "to start the paper on fire to burn the mats," and that he set the fire in the middle of the second-floor storeroom. The description of the materials ignited in this fire was corroborated by Naiman, who testified that bales of cortex pads, which are an insulation material made out of coconut fiber, were involved in the first fire and that the hottest part of this fire was approximately 10 feet from the wall of the building. William Shortway, the Acting Supervisor of the Combustible Bureau of the Paterson Fire Department, confirmed that the fire started on the second floor, damaging coconut fiber bales. Additionally, Shortway testified that he was able to ignite the material with a lighted match and that the fire was caused "by human hand."

Dissenting Opinion

With respect to the second fire, defendant stated that he started this fire by placing a lighted cigarette and a book of matches on an inside ledge of the second-floor storeroom in which the mats were kept. According to defendant, the cigarette would start the book of matches on fire, in turn causing a bundle of mats to catch fire. The State's proofs showed that the second fire was on the second floor in an area different from that of the first fire. The materials that were ignited were flat packs containing 15 to 25 pads of hog and horse hair, which were used in the construction of the mattresses. Captain Vittorio Diddio of the Paterson Fire Department, who investigated the second fire, corroborated the location of the fire and tested these pads, finding that they ignited, burst into flames, and burned quite rapidly when exposed to the open flame of a match. Captain Diddio was of the opinion that "the fire was intentionally set by human, by a human being."

Moreover, defendant stated that with respect to the first fire he "grabbed the fire extinguisher to put it out" and that "other people grabbed fire extinguishers until the fire department arrived." The State's proofs corroborated the fact that fire extinguishers were used by employees to extinguish the fire. Defendant's statements concerning the cleanup procedures and the limited extent of damage from the first fire were corroborated by the State's proofs, and defendant's statement that there was absolutely no harm to anyone or anything except the mats was corroborated by Naiman's testimony. Finally, defendant's statement that he set both fires in hope of gaining the recognition of his company was corroborated to some extent by Naiman's testimony on direct examination that defendant's "attendance record was not that great," and that he (Naiman) believed that defendant's "job was in jeopardy at that time."

Dissenting Opinion

In my view there was more than sufficient corroborative evidence to establish that defendant was telling the truth when he confessed to setting both fires. The failure of defendant to describe with specificity the composition of the materials involved in each fire, or to refer to the rancid odor of the burning hair emitted during the second fire, or to demonstrate how he placed the lighted cigarette and book of matches on the ledge to set the second fire, considered in the light of the totality of the facts and circumstances, does not compel the conclusion that the State failed to satisfy the trustworthiness test laid down in *State v. Lucas, supra.* Similarly, although perhaps an argument can be made that a discrepancy exists between defendant's statement that he set the first fire in the middle of the second-floor storeroom and Naiman's testimony that the hottest point of this fire was 10 feet from the wall, and although perhaps one could speculate whether defendant could have accomplished everything he said he did between the time he punched in for work on the morning of February 12 and the time that the alarm for the second fire was received by the fire department, such arguments and speculations do not undercut as a matter of law the truthfulness of defendant's confession. They simply raise issues of fact as to corroboration of the confession, which are properly to be resolved by the jury. In concluding that the trial court properly submitted this case to the jury, I am mindful of the Supreme Court's admonition in *State v. Lucas, supra,* and deem it worthy of being repeated:

> Confessions, like other admissions against interest, stand high in the probative hierarchy of proof. It is for this reason that the law imposes various safeguards designed to assure that the confession is true. *But safeguards for the accused should not be turned into obstacles whereby the*

> *guilty can escape just punishment.* [30 *N.J.* at 57-58]. (Emphasis added).

Accordingly, I would affirm defendant's convictions and the sentences imposed thereon.

INDICTMENT NO. 397-80 FILED APRIL 12, 1980

NEW JERSEY SUPERIOR COURT
PASSAIC COUNTY
LAW DIVISION
(CRIMINAL)

Indictment No. 397-80

ARSON (2)

THE STATE OF NEW JERSEY

vs.

LAWRENCE KRIEGER,

Defendant

The Grand Jurors of the State of New Jersey for the County of Passaic upon their oath present that Lawrence Krieger, on or about the 29th day of January 1980 in the City of Paterson in the County of Passaic and within the jurisdiction of this Court, did purposely start a fire on the second floor of the Sealy Mattress Company located at 85 Goshen Street, City aforesaid, thereby recklessly placing others in danger of bodily injury or death, and recklessly placing the building of Sealy Mattress Company in danger of damage or destruction, contrary to the provisions of N.J.S. 2C:17-1(b)(1&2), and against the peace of this State, the Government and dignity of the same.

SECOND COUNT

And the Grand Jurors aforesaid upon their oath do further present that Lawrence Krieger, on or about the 12th day of

Indictment

February 1980 in the City of Paterson in the County of Passaic and within the jurisdiction of this Court, did purposely start a fire on the second floor of the Sealy Mattress Company located at 85 Goshen Street, City aforesaid, thereby recklessly placing others in danger of bodily injury or death, and recklessly placing the building of Sealy Mattress Company in danger of damage or destruction, contrary to the provisions of N.J.S. 2C:17-1(b)(1&2), and against the peace of this State, the Government and dignity of the same.

JOSEPH A. FALCONE
SPECIAL DEPUTY ATTORNEY GENERAL — IN — CHARGE
ACTING PASSAIC COUNTY PROSECUTOR

Endorsed: A TRUE BILL

By Martin R. Kayne
MARTIN R. KAYNE,
SPECIAL DEPUTY ATTORNEY GENERAL

s/ John R. Jones, Jr.
JOHN R. JONES, JR., FOREMAN

Prosecutor's Docket No. 80-539 TD Municipal Docket No. 1094-28 & 1093-28

NOTICE OF APPEAL FILED APRIL 11, 1983

JOSEPH A. FALCONE
PASSAIC COUNTY PROSECUTOR
NEW COURTHOUSE
PATERSON, N.J. 07505
(201) 881-4800

SUPREME COURT DOCKET NO._____
SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2943-80T4

CRIMINAL ACTION

STATE OF NEW JERSEY,

Plaintiff-Appellant,

v.

LAWRENCE KRIEGER,

Defendant-Respondent.

PLEASE TAKE NOTICE that the State of New Jersey, by Joseph A. Falcone, Passaic County Prosecutor, hereby appeals to the Supreme Court of New Jersey, pursuant to R. 2:2-1.(a)(2), to review the final judgment of the Superior Court of New Jersey, Appellate Division, rendered February 28, 1983, which reversed the defendant's conviction on two counts of arson in the captioned matter.

Notice of Appeal

JOSEPH A. FALCONE
PASSAIC COUNTY
PROSECUTOR

By: Margaret Ann F. Mullins
Margaret Ann F. Mullins
Assistant Prosecutor

Dated: April 7, 1983

TRANSCRIPT OF PROCEEDINGS — MOTION FOR ACQUITTAL

* * *

THE COURT: Mr. Noonan.

MR. NOONAN: Yes, Your Honor. Respectfully, at this posture of the case, I would move for a Judgment of Acquittal on both counts of the Indictment bearing fully in mind that the line of cases I believe that started with *State versus Smith,* says that the State is entitled to the benefit of the favorable inferences that flow from the facts thus far adduced. And knowing that generally, it is a rather large hurdle.

However, Judge, I think at this posture, it's the state of the credible evidence. And I must frankly confess that I possibly had anticipated something a little bit more from the State's case. That's no reflection on our very able Prosecutor, but it appears that at this posture of the case, absolutely the only piece of evidence that the State has is the otherwise uncorroborated confession, because that's what we would have to call it, orally on one occasion to Mr. Falcone, in writing very generally as per S-4 to Mr. Falcone, and then again orally and reduced to writing in S-2 in evidence.

Now, I believe it's the law of New York—I forgot to tell you, I've got to go down to the law library during the luncheon recess and check it—which I don't think New Jersey adhered to, although I want to check it myself to make certain, that a defendant cannot be convicted on an uncorroborated statement if that be the only evidence in the case.

Now, when I speak about uncorroborated, perhaps the Court might say, well, in applying the tests of the favorable inferences that flow from all of the other evidence, there is no question but

that there was a fire, but again, other than the fact that it is in Krieger's statement alone as introduced in evidence, there is no independent evidence from Shortway, from Diddio, or from Hyslop to prove that this case was arson, that it was deliberately set, that it was set in the manner in which corroborates the statements.

As I recall Chief Shortway's testimony on the fire they investigated, which was the first one, or—Yes, the bales of the coratex, coconut fibers or fibers were not near any electrical outlets, were not near any wall. In fact, they were more out. I wouldn't characterize his words as middle of the floor, but they were away from the walls. This was brought out by Mr. Marmo himself. There was no structural damage, no fire damage to the walls. Some soot damage, smoke damage, and there was water damage. I don't even know if there was water damage to the wall.

Captain Diddio testified that when he got to the scene, the four bales involved had been removed, so he really doesn't know where the fire started, or occurred.

Mr. Hyslop, himself, said he doesn't know whether there was a ledge where these bales of material were. As I recall my cross-examination of one or both of the officers, or no, both of the officers, no matches were found, no cigarette was found, no cigarette with a pack of matches which, of course, was readily explained away, at least partially by Mr. Marmo in redirect examination of, "Well, would a fire consume it?" "Yes, a fire could consume it." "Could it have been squeegied out the door?" "Yes, it could have been squeegied out the door."

The point is whether there never was a cigarette in a package of matches, or whether it had been consumed by fire or squeegied

out. The fact is that it's not in the case, so that all we know now is that on January 29th, 1980 some bales of coratex fibers went on fire without further explanation and no proof from anyone, again, absent Mr. Krieger's statement that it was deliberately set.

And that secondly, that the same thing occurred on February the 12th, 1980, that fire occurred in four bales of mattress stuffing. And again, no independent proof of how these fires occurred, again, absent Mr. Krieger's statement.

As I say, Your Honor, perhaps I didn't anticipate the way the Prosecutor's case was going and my own case, and I will during the lunch hour get to the library. I believe that the law of New Jersey has not been that a person cannot be convicted solely on his otherwise uncorroborated statement, but I would like to check it during the lunch hour.

THE COURT: Mr. Marmo.

MR. MARMO: Well, I'd like to say, for Mr. Noonan's edification, that our library locks the doors at the most opportune time, specifically the lunch hour, which I've never been able to understand. In any event, you're not going to check it at the lunch hour in our library.

MR. NOONAN: No.

THE COURT: Mr. Noonan, you can use my library. Whatever is available here is open to you.

MR. MARMO: But, Judge, I think the point is really moot because the cases on corroboration talk about the slightest piece of corroboration, and they deal with a case of where you have

a confession but no crime. We have a crime. We have a defendant who admits to setting a fire, and we have shown the fire. He said he started a fire at Sealey Mattress Company. There was a fire at Sealey Mattress Company. He said the fire was started on the second floor. There was a fire on the second floor. He said that it was started on January 29th. There was a fire on January 29th. He said that he lit bales of material. There were bales of material that were burned.

There is, I mean if you read the cases, there is an abundent amount of corroboration involved in this case. This isn't a situation where the Government has a confession and no crime.

Furthermore, with regard to the ledge, for whatever that's worth, Mr. Naiman testified that on the occasion of the second fire, which is the one where we have the match book and the cigarette, the bales were stacked up against the wall at the rear of the second floor. I submit on that, Your Honor.

THE COURT: I'm satisfied that there is corroboration, so whether you can't find it in the library or you can't find it in my own library, Mr. Noonan, it doesn't make a lot of difference. As Mr. Marmo points out, the fact is there was a fire.

We have at least the opinion of two persons who investigated the fire that in their conclusion and their opinion, the fire was set by a human hand. They obviously can't say that it was the Defendant who did it, but there is corroboration to some of the statements made by the defendant in S-2.

So, I'm satisfied that in applying the test of *Reyes,* there is evidence in the case from which a Jury can reasonably conclude beyond a reasonable doubt that the defendant is guilty.

I haven't dwelled on the individual elements of this offense because they haven't been addressed specifically. It's in the motion now, but I'm satisfied that all the elements that the State be required to prove do appear in the evidence in such a way that they would support a finding of guilt. The motion, therefore, will be denied.

All right, gentlemen, why don't we end this case first. 1:30, Mr. Noonan.

MR. NOONAN: Thank you, Your Honor.

* * *

TRIAL COURT JUDGMENT OF CONVICTION AND ORDER FOR COMMITMENT

NEW JERSEY SUPERIOR COURT
PASSAIC COUNTY

LAW DIVISION — CRIMINAL
S.B.I. No. _____
DATE OF ARREST 02-25-80

THE STATE OF NEW JERSEY

v.

LAWRENCE KRIEGER,

Defendant

The defendant on April 1, 1980 was indicted on Indictment #397-80

The defendant on April 24, 1980 entered a plea of not guilty to the Indictment for the crime(s) of: (Please include Title, Statute and Degree)

ARSON (first and second counts) N.J.S. 2C:17-1(b)(1&2)

_____

_____

_____

_____

and the defendant having on February 17, 1981

xx BEEN TRIED with A JURY AND A verdict of GUILTY TO:

ARSON (first and second counts) N.J.S. 2C:17-1(b)(1&2)

_____

_____

Judgment and Order

It is, therefore, on March 24, 1981

Ordered and Adjudged that the defendant be and is sentenced (FIRST COUNT) to be committed to the New Jersey Youth Correction Institution Complex for an Indeterminate Term. (SECOND COUNT) to be committed to the New Jersey Youth Correction Institution Complex for an Indeterminate Term. Term of sentence on this second count is to run concurrent with term of sentence this date imposed by the Court on the first count of this indictment.

A penalty of $25 is imposed on each count on which the defendant was convicted unless the box below indicates a higher penalty pursuant to N.J.S.A. 2C:43-3.1.

xx penalty imposed on count two (2) is $25.00

Total Fine_____, Total Restitution_____, Total VCCB Penalty $25.00.

Installment payments, if applicable, are due at the rate of $_____per_____.

IT IS FURTHER ORDERED THAT THE SHERIFF DELIVER THE DEFENDANT TO THE AFORENAMED INSTITUTION TO SERVE HIS SENTENCE.

STATEMENT OF REASONS REQUIRED BY R. 3:21-4(e) APPEARS ON THE REVERSE SIDE

A.O.C., Form No. LR-35 1/78 Rev. 2/81

cc: Chief Probation Officers
AOC, Sentencing Research Project
Department of Corrections (where defendant sentenced to state correctional institution)
County Penal Institution (where defendant sentenced to county penal institution)

ATTORNEY FOR DEFENDANT

Upon entry of Guilty Plea or Conviction	Defendant to receive R. 3:21-8
John Noonan, Esq.	From 02-25-80 to 02-26-80
At time of Sentencing	Days credit -2-

John Noonan, Esq.

s/ Erlliam S. Kattack
County Clerk

March 24, 1981

Judgment and Order

STATEMENT OF REASONS, R. 3:21-4(e)

Considering the nature of the offense (Arson) and the potential harm that may have been caused, together witht the likelihood — from defendant's psychological makeup — that another offense may be committed and the deterrent effect, some incarceration is necessary. Because of defendant's youth and lack of prior record, an indeterminate term is imposed.

_____

_____

_____

_____

s/ Herbert S. Alterman, J.S.C.

RECEIVED
Sep. 1981
Office of the
Public Defender

No. 84-145

In The

Supreme Court of the United States

OCTOBER TERM, 1983

LAWRENCE KRIEGER,

Petitioner,

-vs-

STATE OF NEW JERSEY,

Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of New Jersey

BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI

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27pp

QUESTION PRESENTED

Does the factual finding that there existed adequate, independent evidence to corroborate the petitioner's confessions, so as to permit admission into evidence of those confessions under a standard which is substantially identical to that adopted by this Court and the overwhelming majority of state courts, warrant the grant of a petition for certiorari?

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No. 84-145

In The

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BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI

OPINIONS BELOW

The opinion of the New Jersey Supreme Court (Pa 1)* is reported in *96 N.J. 256 (1984).* The opinion of the Superior Court of the State of New Jersey, Appellate Division (Pa 4), is reported at *193 N.J. Super. 568 (App. Div. 1983).*

JURISDICTIONAL STATEMENT

The jurisdictional requisites are adequately set forth in the petition.

---

*Pa refers to the petitioner's appendix.
T refers to the transcript of proceedings on February 17, 1981.
2T refers to the transcript of proceedings on February 18, 1981.
3T refers to the transcript of proceedings on February 19, 1981.
4T refers to the transcript of proceedings on February 20, 1981.
ST refers to the transcript of proceedings on March 24, 1981.

COUNTER-STATEMENT OF THE CASE

At approximately 7:00 a.m., on January 29, 1980, plant manager Harold Naiman arrived at the Sealy Mattress Company, which employed seventy workers in its facility at 85 Goshen Street, Paterson, New Jersey. (2T71-18 to 20; 2T72-1 to 2; 2T72-10 to 12; 2T81-4 to 8). Pursuant to his work routine, Mr. Naiman conferred with his foreman regarding factory operations. (2T72-14 to 16). At approximately 7:20 a.m., an announcement was made over the loudspeaker system that there was a fire on the second floor of the three-story facility. (2T89-19 to 2T90-4; 2T72-17 to 19). Upon hearing this report, the two men ran up to the second floor of the plant. (2T72-19 to 20). This area, primarily used to store the cortex insulating pads utilized in mattress manufacture, was approximately forty by one hundred feet and U-shaped. (2T82-15 to 17); some assembling of mattresses was conducted on the east end of the floor. (2T73-14 to 16).

When Mr. Naiman reached the second floor area, he observed that it was the cortex pad materials which were burning (2T73-19 to 24), fifty of which constituted one bale of cortex. These cortex bales were stacked against the wall, with the "hottest" part of the fire appearing to be approximately ten feet from the wall. (2T86-2 to 5; 2T73-21 to 22). Naiman saw that the bulk of the fire was in the "whole middle [area]." (2T90-22 to 23). At this time, Sealy employees were attempting to put out the fire with extinguishers. (2T72-21 to 22; 2T86-15 to 17). Shortly thereafter, the sprinkler system was activated, and the Paterson Fire Department responded to the concurrent alarm at approximately 8:06 a.m. (2T102-10 to 24).

In the course of extinguishing the fire, the fire department directed the removal of the approximately thirty bales of cortex stored in the area to the factory yard (2T74-18 to 22); if any sign of combustion was evident, the firemen then broke open the bales and wet them thoroughly. (2T74-22 to 23). No structural damage to the building's floor or walls resulted from the fire, although there was some water damage from seepage to the sewing floor below, and to the mattress covers and border materials. (2T74-5 to 7; 2T75-2 to 7). Approximately eight bales were partially or completely destroyed by fire. (2T85-22 to 2T86-7). As a result of the clean-up required because of the fire, mattress production did not resume until the following day. (2T75-9 to 10).

The plant premises were examined by Paterson Fire Investigator Chief William Shortway on the date of this fire. (2T99-7 to 8; 2T99-19 to 21). Chief Shortway, who at the time of the fire had approximately seventeen years experience in fire-fighting, confirmed that the fire had originated on the second floor and that it had effected no damage to the building's structure. (2T100-8 to 12). Chief Shortway also determined that the items involved in the fire and removed to the yard area were bales of fiber used in mattress construction. (2T100-13 to 15).

In addition, Chief Shortway performed a number of tests regarding the combustibility of materials taken from bales identical to those burned in the fire. (2T100-19 to 23). First, he attempted to ignite the bales with a lit cigarette. (2T100-24 to 2T101-3). The bale failed to ignite, and the cigarette went out. (2T101-4 to 6). Thereafter, Chief Shortway tried to ignite the bale material with a match and it did catch on fire. (2T101-7 to 11). These tests were first conducted at the factory; a second series of tests was done at fire headquarters. (2T101-12 to 14). Although Chief Shortway was unable to identify a specific cause of the fire, on the basis of his examination of the premises, he concluded that it was not caused by any heating or wiring system in the building itself because there were no ignition sources of that type in the area of the fire. (2T101-25 to 2T102-1). Chief Shortway testified that the fire was intentional and "done by human hand." (2T102-2 to 6). Furthermore, although no burned matches or any other source of ignition were found, Chief Shortway noted the remote liklihood of a match being recovered due to the extensive clean-up operation effected by the Paterson Fire Department, which included "squeegeeing" the storage room floor and otherwise removing water and burned materials. (2T105-1 to 14).

Two weeks later, on February 12, 1980, the Sealy Mattress Company plant was the site of a second arson which was reported by alarm to the Paterson Fire Department at approximately 7:03 a.m. (2T77-7 to 20; 2T110-12 to 13). Upon arriving at the factory that morning shortly after 7:00 a.m., Mr. Naiman observed Paterson firemen and their equipment on the premises. (2T77-14 to 17). This second fire also originated on the second floor (2T77-17 to 18), and the burning materials were the flat packs of hog and horse hair pads used to construct mattresses. (2T77-21 to 2T78-1). This fire was quite smokey, and there was a distinct rancid odor due to the animal hair. (2T78-12 to 14).

In containing the fire, the Fire Department removed the hair pads from the factory to the outside.(See 2T78-15 to 20). Again, although there was no structural damage effected by the fire itself, the weight of the water used to extinguish the blaze caused the floor to buckle. (2T78-21 to 2T79-2). Fifteen bundles, or three bales of hair pads, were either partially or completely burned in the fire. (2T90-10 to 19).

On the date of this second arson, Captain Vittorio Diddio, employed by the Fire Department for approximately nineteen years at the time of the fire, was assigned to the Bureau of Combustibles as a fire investigator; he examined the three-story Sealy Mattress factory. (2T106-1 to 16). Pursuant to his investigation, Captain Diddio did not find any structural damage to the building itself. (2T106-20 to 25). He did observe that bales of mattress stuffing had been moved from the second floor to outside the building, where they were wet down by the firemen. (2T107-8 to 10). Captain Diddio then took a sample of the material from the hair bales and performed two tests to determine its combustibility. (2T107-20 to 21).

Placing the material in an ashtray, Captain Diddio first attempted to ignite the material with a lit cigarette. (2T107-21). When Captain Diddio used a cigarette, the material smoldered, and, in his opinion, might possibly have sustained a fire under certain conditions. (2T107-24 to 25; 2T109-10 to 12). However, when he exposed the material to an open flame, it immediately burst into flame and burned quite rapidly. (2T108-2 to 3). Based upon his investigation, Captain Diddio determined that the fire was intentionally set. (2T108-8 to 9). Although no match or cigarette was recovered by Captain Diddio, in the course of containing the fire, the bale materials had been brought outside by the firemen, and the area cleared. (2T109-21 to 2T110-1).

On February 14, 1980, Investigator Arthur Hyslop and Investigator Robert Daniels, members of the Arson Unit of the Passaic County Prosecutor's Office, spoke with plant employees concerning the two arsons. (3T77-6 to 8). The petitioner, who had been employed there since January 2, 1980, was among those interviewed (2T76-12 to 15); the petitioner's work duties were to check schedules and to correlate the box spring covers with the daily schedules by examining production loads and making notations on a pre-determined list when these materials were before him. (2T80-11 to 25). When completed orders of box spring covers were available, the petitioner was responsible for transporting them to the second floor by elevator and distributing the covers to the box spring department. (2T80-15 to 17).

The petitioner was not one of the three Sealy employees regularly working in the storage area; however, his employment duties routinely and frequently took him there. (2T83-8 to 16). After his correlation of the box spring covers with the production schedule, the petitioner was required to bring the covers to the second floor via the elevator or a stairway affording access to the first floor sewing room. (2T8-8 to 12; 2T84-16 to 23).

When the officers met with petitioner at the plant on February 14, 1980, Investigator Daniels told him that they were conducting an investigation of the two arsons at the company. (2T75-25 to 3T76-2). Investigator Daniels also read him his *Miranda* rights. (3T75-17 to 3T76-17). Thereafter, Investigator Daniels questioned the petitioner about the arsons. (3T76-23 to 24). The petitioner denied any knowledge of the fires other than that he had assisted in extinguishing them. (3T77-2 to 4). Investigator Daniels then asked petitioner if he would be willing to take a polygraph test. (3T77-9 to 10). The petitioner consented, and the examination was scheduled for February 25, 1980. (2T77-10 to 11).

As agreed upon, petitioner reported to the Prosecutor's Office on February 25, 1980. (3T77-10 to 14). At that time, Investigator Hyslop introduced petitioner to Investigator Richard Falcone, the certified polygraph examiner. (3T77-19 to 24; 3T3-12 to 13). The petitioner signed the log book and Investigator Falcone gave him an informational booklet regarding the polygraph instrument and the procedures employed. (3T4-11 to 16). Investigator Falcone advised the petitioner to take as much time as necessary to review the booklet and to ask him any questions he might have concerning the test. (3T5-8 to 11). Investigator Falcone then left the petitioner alone to read the materials, returning in approximately ten minutes. (3T77-17 to 24). Thereafter, the officer escorted defendant to the polygraph suite. (3T6-3 to 4).

Prior to proceeding further, Investigator Falcone advised petitioner that he was under no obligation to undergo the test, and should he choose to do so, petitioner was free to leave at any time. (3T6-16 to 10). The petitioner was told that he had a right to have a lawyer present prior to any questioning or polygraph examination; should he be unable to afford counsel, an attorney would be appointed to represent him. (3T6-14 to 19). Investigator Falcone explained that petitioner did not have to answer any questions posed to him; he also said to petitioner that even should he begin to answer questions, the petitioner could elect to stop answering any of the questions at any

time during the interview. (3T6-22 to 25). Finally, Investigator Falcone told petitioner that anything he did say could be used against him in court. (3T7-1 to 3).

After this explanation of his rights, petitioner executed a form acknowledging that he understood his constitutional rights and granting permission to administer the polygraph examination. (3T7-6 to 8; 3T10-16 to 3T11-4). Investigator Falcone then told the petitioner how the polygraph examination was going to be conducted. (3T11-25 to 3T12-4).

Pursuant thereto, Investigator Falcone asked petitioner to demonstrate various physical responses. (3T12-1 to 3T17). Investigator Falcone also took preliminary background information from the petitioner. (3T14-18 to 21). Investigator Falcone then checked the polygraph for accuracy by plotting a norm for petitioner's responses to three questions; he found the instrument to be operating properly. (3T15-7 to 3T17-10). Investigator Falcone also advised petitioner that the polygraph instrument could determine whether or not an individual lied, but not his or her reason for doing so. (3T17-20 to 3T18-14). Finally, Investigator Falcone advised petitioner that if he intended to lie, he should reconsider going through with the test, inasmuch as the results would indicate whether or not he was truthful in his answers. (3T18-15 to 19).

The investigator then began to discuss the arsons and petitioner's employment at the plant. (3T18-20 to 25). Petitioner initially denied any knowledge of the fires except that he had tried to assist in extinguishing them. (3T18-22 to 25). Thereafter, petitioner stated that he might have inadvertently started the fire by possibly dropping a cigarette in the plant's storeroom. (3T19-1 to 12). Investigator Falcone conferred with Investigator Hyslop (3T19-14 to 18); afterwards, he returned to the room and told defendant that it was highly unlikely that the fire could have been started by his having dropped a cigarette. (3T20-4 to 6).

The petitioner then told Investigator Falcone that he had been playing with matches and that he wanted to see if the material would ignite. (3T20-9 to 10). Upon further questioning, the petitioner admitted that he had intentionally set the fire on January 29, 1980, by holding lighted matches against mattress materials. (3T20-11 to 14). The petitioner cited a need to receive recognition from his employer and from his family as his motive for the arson. (3T20-16 to 2T21-2).

The petitioner subsequently admitted setting the factory fire of February 12, 1980; he said the second fire was started by his placing a cigarette inside a book of matches which he had positioned near flammable material. (3T21-12 to 20). Petitioner stated that he again assisted in putting out the fire, which he had started in order to gain recognition from his employers and family (in particular, his father, who was a Newark fireman). (3T21-20 to 3T22-13). The petitioner also told Investigator Falcone that he was on the list for appointment as a Newark fireman. (3T22-7 to 8).

Investigator Falcone then asked petitioner to write down what he had told him. (3T22-13 to 15). The petitioner indicated he would include in his statement that he "was sorry for what he had done and would never do anything like it again." (3T23-15 to 18). Investigator Falcone requested that petitioner complete a brief paragraph setting forth what he had said, and if he were sorry, to so indicate that on the paper. (3T22-19 to 22). The petitioner complied and provided the following statement:

> Lawrence Krieger 12:36 p.m.
> 61 Brill St. Newark February 25, 1980
>
> I'm really sorry for what happen (sic) at Sealy Mattress Company. Im (sic) the one who set the fires on Jan. 29 and Feb. 12. I will never do anything like this again, I never did anything like this before and Im (sic) ashamed. Everything I have written and said is 100% truth. Im (sic) sorry.
>
> [signed] Lawrence Krieger

(3T24-7 to 23).

Investigator Falcone then asked the petitioner to indicate whether or not what he had written was the truth and if any complaints, promises or threats had been made against him. (3T25-5 to 15). The petitioner then added a second paragraph in which he said the statement had been given voluntarily:

> I have read the above and it is all the truth. No one have (sic) forced me to write this, or made any promises to me. I was treated very fairly by Richard Falcone. I have no complaints about what has happen (sic) hear (sic) today.
>
> [signed] Lawrence Krieger
> 12:46 p.m.

(3T24-7 to 23).

Thereafter, Investigator Falcone brought the petitioner downstairs to meet with Investigator Hyslop. (3T26-11 to 12). Prior to questioning the petitioner, and in the presence of Investigator Falcone, Investigator Hyslop advised the petitioner of his rights. (3T26-12 to 13); Investigator Hyslop then questioned him about the factory fires. (3T26-14 to 15). The petitioner was asked whether he would give a formal typewritten statement concerning his responses, and he agreed to do so. (3T26-17 to 19).

Before the petitioner's statement was taken, petitioner was again advised of his rights, and he again executed a waiver form. (3T26-19 to 22). Thereafter, he gave a formal statement to police. (3T27-12 to 13). This confession was taken in question-and-answer form, and the relevant inculpatory portion is set forth below:

> Q. Knowing and understanding your rights, and knowing you are not under arrest or custody, do you wish to give us a statement about a fire which occurred on January 29, 1980 and a fire that occurred on February 12, 1980?
>
> A. Yes.
>
> Q. Can you tell me in your own words the circumstances leading up to the fire which occurred on January 29, 1980?
>
> A. Well I was under pressure (sic) a lot of problems and I was constantly told I was irresponsible. I punched in. I went into the sewing room to see if anything had to brought up stairs (sic). There wasn't anything at the time. So I walked up stairs (sic) went into the store room and I had a cigarette and I was playing with a book of matches. I dropped them on the floor (sic) then the fire started. And I grabbed the fire extinguisher to put it out. No harm intended. Then other people grabbed fire extinguishers until the fire dept. arrived, then I went downstairs to help cover the machines and the materials so they wouldn't be damaged. Then we cleaned up and work went on as usual.
>
> Q. What kind of pressure are you under?
>
> A. Many family problems, non-understanding of the things I do, (sic) lack of my ability and responsibility.

Q. On January 29, 1980, what time did you punch in to work?

A. About five to seven. (a.m.)

Q. How soon after punching in did you go to the store room?

A. Twenty minutes.

Q. Approximately what time did you set the fire?

A. 7:30 a.m.

Q. You stated previously, that you were playing with a book of matches. Why?

A. I dropped them on the floor to start the paper on fire to burn the matts (sic).

Q. In what part of the store room did you set the fire?

A. The middle.

Q. Did you know before you got to work that you were going to start a fire?

A. Not really. It was on my mind.

Q. When did you first plan to start the fire and why?

A. The day before it happened, did it for recognition and a form of responsibility cause I put the fire out before it spread to any great deal of damage. No harm was intended.

Q. Do you want a cup of coffee or something to drink at this time or go to the men's room.

A. Just a cigarette. (At this time, Inv. Hyslop gave him a cigarette).

Q. When you planned the fire, did you also plan to put it out?

A. Yes, immediately.

Q. Previously, you stated that you wanted to receive recognition. Why?

A. I felt as if no body (sic) knew I was there. And I was just running around doing things that no one really appreciated.

Q. From whom do you want to get this recognition?

A. Any superior.

Q. Did you feel by starting the fire and subsequently extinguishing the fire that you would gain this recognition?

A. I don't know but I was hoping to.

Q. At this time would you like to add anything else regarding the fire on January 29, 1980?

A. Only that there was absolutely no harm to any one or anything except the mats.

Q. Again can you tell me in your own words the circumstances which were involved regarding the fire at Sealy Mattress Co. on February 12, 1980?

A. I punched in. I went to the sewing room to see if anything was to be brought upstairs. I brought a cart of materials up on the elevator. I talked to Wyatt. I proceeded to walk down stairs (sic). Still with family problems, and work problems regarding my responsibility I lit a cigarette, put a book of matches on an inside ledge, placing the cigarette down on the same ledge, (sic) I walked to the third floor. I thought I heard someone coming from upstairs. I spoke to Willie and came immediately down stairs (sic) to extinguish the fire. Again with no harm intended.

Q. Why did you start this second fire on February 12, 1980?

A. Hoping for possible recognition of the company and home.

Q. At approximately what time did you set this fire?

A. About 8:00 a.m.

Q. In what room did you place the cigarette and matches on the ledge?

A. It was in the store room where the mats are kept.

Q. Did anyone besides yourself have anything to do with setting the fire on January 29, 1980 or February 12, 1980?

A. No.

Q. Did you discuss this with anyone before you set the fires?

A. No.

Q. When did you start working at Sealy Mattress Co.?

A. January, I don't know if it was the second or third. I think it was the second, 1980.

Q. Did you ever set any other fires either at Sealy Mattress Co., or anywhere else?

A. Never.

Q. On February 12, 1980 did you know before you got to work that you were going to start a fire?

A. Yes.

Q. When did you first plan to start the fire?

A. The night before and that morning. Again, with no harm intended.

Q. Previously in your statement, you state that you spoke to Willie. Who is Willie?

A. He's in charge of foam rubber at Sealy.

Q. Why did you put a lit cigarette and a book of matches on the ledge in the store room?

A. To start a small fire.

Q. How would this start the fire?

A. The cigarette would start the book of matches on fire, causing a bundle of mats to catch.

Q. Is there anything that you would like to add regarding the fire on February 12, 1980?

A. I just want it to be understood that there was no harm intended or a great deal of damages to occur. (3T88-14 to 3T94-11).

On April 1, 1980, the petitioner was charged in Passaic County Indictment No. 397-80 with two counts of third degree arson, in violation of *N.J.S.A. 2C:17-1(b) (1 and 2)*. (Pa 26 to Pa 27). The petitioner was tried before the Honorable Herbert S. Alterman, J.S.C., and a jury between February 17, 1981 and February 20, 1981. (Pa 35).

The petitioner's confessions were held admissible after a *Miranda* hearing before Judge Alterman on June 17, 1981. (T4-17 to 18; T11-4). After reviewing the testimony given by Investigator Hyslop, Investigator Falcone and the petitioner, together with the arguments of counsel, the court was satisfied beyond a reasonable doubt that the statements of petitioner were given voluntarily; accordingly, they were admissible at trial. (2T25-6 to 14).

With respect to the defendant's confession, details concerning the petitioner's presence in the factory on the dates and at the times of the arson (2T79-24 to 25; 2T80-1 to 2; 2T99-22 to 25; 2T106-8 to 11), where he set each fire (2T86-1 to 5; 2T90-22 to 23), the manner of their ignition (2T101-7 to 11; 2T108-2 to 3), a general description of the materials burned (2T100-13 to 15; 2T78-8 to 12; 2T107-1 to 7) and the very fact that the fires were arson (2T102-2 to 6; 2T108-4 to 9) were corroborated by the State's proofs at trial. Furthermore, the petitioner's statements regarding the efforts made to extinguish the fires (2T74-15 to 24; 2T78-15 to 16), the subsequent clean-up on each occasion (2T75-11 to 24; 2T96-11 to 13), the absence of structural damage to the building after each fire (2T74-8 to 14; 2T78-21 to 2T79-2) and a possible motive for setting the fires (2T81-17 to 22; 2T94-7 to 21) were supported by trial testimony.

At the conclusion of the State's case, defense counsel moved for a judgment of acquittal on the basis that the petitioner's confessions were not corroborated by the evidence adduced at trial. (3T124-1 to 20). In denying the defendant's application, the court found that there was sufficient corroboration of the confessions and that evidence had been presented which, if believed, would support a finding of guilt by the jury. (See 3T128-23 to 3T129-19).

On February 20, 1981, the jury returned a verdict of guilty on both counts of the indictment. (See Pa 35). On March 24, 1981, the petitioner appeared before Judge Alterman for sentencing. (Pa 35). The court imposed concurrent, indeterminate terms at the Yardville Youth Correction Center on the two counts. (Pa 36). With respect to Count

II, the court also directed the petitioner to pay a $25 penalty to the Violent Crimes Compensation Board. (Pa 36). On the same date, Judge Alterman granted the petitioner's application for bail pending appeal.

The petitioner filed his Notice of Appeal to the Superior Court of New Jersey, Appellate Division, on March 24, 1981. (Pa 28 to Pa 29). The matter was argued before the Appellate Division on January 4, 1983. (Pa 4). In its majority opinion, that court reversed the petitioner's conviction on the ground of the inadequate independent corroboration of the petitioner's conviction, which issue (Pa 5) it raised *sua sponte*. The case was then remanded for entry of a judgment of acquittal. Presiding Judge Herman D. Michels filed a dissenting opinion on the above issue, expressly finding that "the State's proofs were sufficiently corroborative to present a question for the jury as to the trustworthiness of defendant's confession." (Pa 20 to 21).

The respondent's Notice of Appeal to the Supreme Court of New Jersey was docketed on April 11, 1983. (Pa 28 to Pa 29). On May 16, 1984, in a 4-3 ruling, the New Jersey Supreme Court reversed the decision of the Appellate Division and reinstated the conviction for the reasons set forth in the dissenting opinion of the Appellate Division. (Pa 1 to Pa 2). The three dissenting justices noted that they would have affirmed for the reasons expressed in the Appellate Division majority opinion. (Pa 3).

On July 16, 1984, the petitioner filed his petition for a writ of certiorari; he remains on bail pending review of his application by this Court.

SUMMARY OF ARGUMENT

The standard utilized by the New Jersey Supreme Court in its determination that the petitioner's voluntary confessions were sufficiently corroborated by the evidence adduced at trial is completely consistent with the rulings of this Court and the overwhelming weight of state court decisions on the requisite corroboration of extrajudicial statements.

ARGUMENT

The corroboration of confession rule enunciated by the New Jersey Supreme Court in *State v. Lucas, 30 N.J. 37, 152 A. 2d 50 (1959)* and applied in the present case fully comports with federal and state constitutionally guaranteed rights to due process of law. The petitioner's assertion that state and federal courts have a "compelling" need for guidance regarding the type and quantum of independent corroboration required to substantiate a confession ignores settled federal and state law of long precedence. The instant matter cannot legitimately be characterized as a federal question invoking review because the New Jersey standard regarding the adequate independent evidence which will warrant consideration by the fact-finder of a defendant's voluntary confession is in complete accord with the mandates of this Court. In asserting a variance between the pronouncements of this Court on the corroboration of extrajudicial statements and the reinstatement of the petitioner's conviction by the New Jersey Supreme Court, the petitioner weaves a fiction which is disclosed by reference to the relevant decisions of both Courts.

In *Smith v. United States, 348 U.S. 147 (1954)*, this Court spoke directly to the issue of the requisite corroboration for a confession, stating:

> It is agreed that corroborative evidence does not have to prove the offense beyond a reasonable doubt, or even by a preponderance, as long as there is substantial independent evidence that the offense has been committed, and the evidence as a whole proves beyond a reasonable doubt that defendant is guilty.

Id. at 156.

With respect to the character or quantum of evidence necessary, this Court in *Smith* observed. "All elements of the offense must be established by independent evidence of corroborated admissions, but one available mode of corroboration is for the independent evidence to bolster the confession itself and thereby prove the offense 'through' the statement of the accused." *Id.*

In *Opper v. United States, 348 U.S. 84 (1954)*, which affirmed a conviction on a charge of inducing a federal employee to accept additional compensation, this Court had occasion to discuss the requirement of corroboration of an extrajudicial statement, holding:

> .....the corroborative evidence need not be sufficient, independent of the statements to establish the corpus delecti. It is necessary, therefore, to require the Government to introduce substantial independent evidence which would tend to establish the trustworthiness of the statement. Thus, the independent evidence serves a dual function. It tends to make the admission reliable, thus corroborating it while also establishing independently the other necessary elements of the offense. *Smith v. United States, No. 52* this term. It is sufficient if the corroboration supports the essential facts admitted sufficiently to justify a jury inference of their truth. Those facts plus the other evidence besides the admission must, of course, be sufficient to find guilt beyond a reasonable doubt.

Id. at 93.

Evaluated in light of the above formulations, the pronouncements of the New Jersey Supreme Court in *State v. Lucas, supra,* that "the State must introduce independent proof of facts and circumstances which strengthen or bolster the confession and tend to generate a belief in its trustworthiness, plus independent proof of loss or injury...." follows in letter and spirit the directives of this Court. *Id.* at 56, 152 A. 2d at 60.

The character of corroborating evidence was also examined by the *Lucas* Court, which quoted with approval the analysis given in a very early New Jersey case, *State v. Guild, 10 N.J.L. 163, 187, 18 Am. Dec. 404 (Sup. Ct. 1828):*

> In the first place, however, it becomes material to a correct understanding of the subject to settle what is meant by the qualification 'corroborating' annexed to the term 'circumstances.' The phrase clearly does not mean facts which independent of the confession will warrant a conviction, for then the verdict would stand not on the confession, but upon those independent circumstances. To corroborate is to strengthen, to confirm by additional security, to add strength. The testimony of a witness is said to be corroborated, when it is shown to correspond with the representation of some other witness or to comport

> with some facts otherwise known or established. Corroborating circumstances then, used in reference to a confession, are such as serve to strengthen it, to render it more probable, such in short as may serve to impress a jury with a belief of its truth.

30 N.J. at 54-55, 152 A. 2d at 59. See *Brown v. State, 154 N.E. 2d 720 (Ind. 1959).*

Review of the cited standards unambiguously disproves the petitioner's contention that in reinstating his conviction, the New Jersey Supreme Court has deviated from the test for corroborating evidence approved by this Court. Furthermore, comparison of the holdings in both decisions show that regardless of nomenclature *i.e.*, "any legal evidence" versus "substantial independent evidence" the rulings by this Court on the issue were meticulously observed by the New Jersey Supreme Court.

Similarly, the petitioner's contention that state and federal courts are in dire need of direction in this area is patently frivolous. The decisional law of other jurisdictions shows New Jersey not to be unique in limiting the burden which must be satisfied by corroborating evidence. See *e.g., Armstrong v. State, 502 P.2d 440 (Alaska 1972)* (corroborative evidence need not be sufficient to sustain conviction independent of defendant's statement); *Nelson v. State, 123 A. 2d 859 (Del. 1956)* (to establish that a crime has been committed, a quantum of proof aliunde the confession, though not in itself conclusive, must prove the crime beyond a reasonable doubt when reviewed in conjunction with the confession).

The following states also recognize that corroborating evidence need not be of such a character as to independently establish the defendant's guilt. See *Frazier v. State, 107 So. 2d 16 (Fla. 1958)* (before a confession is admitted into evidence, there must be some independent proof, either direct or circumstantial, tending to show a crime has been committed); *Jefferies v. State, 92 Ga.App. 483, 88 S.E. 2d 713 (1955)* (a confession by a criminal defendant must be supported by independent evidence tending to establish the guilt of the accused); *State v. Hale, 367 P.2d 81 (Hawaii 1961)* (with reference to a corroborated confession, full proof of the corpus delecti is not required); *People v. Pry, 75 Ill. App. 2d 103, 220 N.E. 2d 238 (3d App. Ct. 1966), aff'd 38 Ill. 2d 261, 230 N.E. 2d 825 (1967)* (direct and positive evidence is unnecessary to prove corpus delecti; it is

sufficient if other evidence so corroborates a confession as to show commission of the crime beyond a reasonable doubt); *Jones v. State, 252 N.E. 2d 572 (Ind.1969)* (elements of crime may be shown by use of confession in connection with any independent evidence in proving the case - material/substance on which crime has been committed, plus independent evidence from which an inference may be drawn that crime was committed in connection thereto are sufficient to show corpus delecti).

The minimal threshold requirements regarding corroboration which will permit a jury to pass upon a confession together with all other evidence in the case were also treated in the following decisions. *Sefton v. State, 295 P. 2d 385 (Nev. 1956)* (proof of corpus delecti is not required to be as full and conclusive where there is corroborating confession); *State v. Pickard, 177 A.2d 401 (N.H. 1962)* (supporting evidence need not be considered independently of an extrajudicial confession in order to establish the corpus delecti); *People v. Rooks, 40 Misc. 2d 359, 243 N.Y.S. 2d 301,311 (Sup. Ct. 1963), aff'd 25 A.D. 2d 952, 271 N.Y.S. 2d 601 (1966), aff'd 18 N.Y. 2d 960, 277 N.Y.S. 2d. 417, 223 N.E. 2d 897 (1967)* (extensive discussion of independent evidence, exclusive of the confession, which is required to establish the corpus delecti); *State v. Thomas, 15 N.C.App. 289, 189 S.E. 2d 765, cert. den. 281 N.C. 763, 191 S.E. 2d 360 (1972)* (evidence other than defendant's confession must tend to establish the fact that the crime charged has been committed); *State v. Scarberry, 114 Ohio App. 85, 18 Ohio App. 2d 394, 180 N.E. 2d 631 (1961)* (presentation of some probative evidence aliunde the confession, tending to establish the corpus delecti, as a prerequisite to the admission of the confession; however, this evidence need not be beyond a reasonable doubt nor even present a prima facie case because it is sufficient if it tends to prove a material element of the offense); *Lankister v. State, 298 P.2d 1088 (Crim. Ct. App. Okla. 1956)* (extrajudicial confession will not sustain a conviction unless it is corroborated by independent evidence, either direct or circumstantial, relating to the corpus delecti).

Furthermore, expansive standards regarding the requisite corroboration of a defendant's confession were rejected in the following cases: *State v. Schleigh, 310 P.2d 341 (Ore. 1957)* (independent proof that crime charged was committed does not require that such proof be sufficient to warrant conviction, but the confession, taken with other proofs, must show beyond a reasonable doubt that crime was committed and that defendant committed it); *Commonwealth v. Byrd, 417*

A.2d 173 (Pa. 1980) (threshold requirement for independent evidence prior to admission of a confession "is not equivalent to the Commonwealth's ultimate burden of proof;" prosecution cannot preliminarily be required to prove the existence of a crime beyond a reasonable doubt inasmuch as rationale of corpus delecti rule is to prevent conviction where no crime has been committed); *State v. Cortellesso, 417 A.2d 299 (R.I. 1980)* (court, citing *State v. Jardine, 293 A.2d 901, 904 (R.I. 1972)*, noted it is not necessary to establish corpus delecti beyond a reasonable doubt before a confession can be received into evidence); *State v. Best, 232 N.W. 2d 447 (S.D. 1975)* (admissibility of extrajudicial confession is conditioned on its corroboration by other evidence showing the injury or loss, and the fact of some criminal responsibility for the injury or loss); *Smith v. State, 329 F.2d 498 (5th Cir. 1964)* (applying Texas law: confession may be used in connection with other facts and circumstances in establishing corpus delecti).

Respondent submits that the record below discloses ample corroboration of the defendant's confession and confirms that the New Jersey Supreme Court acted correctly in reinstating the conviction. However the petitioner couches his allegation of error, whether it be in terms of the sufficiency of corroborating evidence which happens to be circumstantial, or otherwise, respondent submits that to demand a standard of proof above what the petitioner herein describes as circumstantial is another way of requiring proof beyond a reasonable doubt before a confession will be admitted into evidence for consideration by the trier of fact. Notwithstanding the petitioner's dissatisfaction with the standard applied in this case, it clearly comports with the rule of law which has been approved by this Court and followed in the overwhelming majority of jurisdictions. To question the efficacy of this standard is equivalent to challenging, as petitioner does, the proposition that circumstantial evidence can support a finding of guilt beyond a reasonable doubt. Certainly, no decision by this Court has held that circumstantial evidence will not sustain a guilty verdict; in fact, this Court has ruled to the contrary. *Tot v. United States, 319 U.S. 463, 466-467 (1943).* Similarly, federal case law provides no basis from which to infer that circumstantial evidence will be deemed insufficient to corroborate a confession if it constitutes proof of petitioner's guilt beyond a reasonable doubt. See *Smith v. United States, supra at 157, 159.*

With reference to the arsons at the Sealy Mattress Company, the petitioner confessed to setting a fire in the building on January 29, 1980 (3T88-20 to 3T89-11); independent evidence through the testimony of Harold Naiman and Chief Shortway established that a fire had occurred at the premises on that date. (2T72-1 to 2; 2T72-10 to 12; 2T72-22 to 24; 2T102-10 to 14; 2T101-15 to 20; 2T101-21 to 2T102-2 to 6). The petitioner stated that he set the first fire at approximately 7:30 a.m. (3T89-23); an alarm signalling the fire at the Sealy factory was received by the Paterson Fire Department at 8:06 a.m. on January 29, 1980. (2T102-10 to 14). Moreover, the petitioner's presence at the factory on that date was confirmed by his employee time card which indicated that he had punched in at 6:58 a.m. (2T79-24 to 25).

Similarly, corroboration of the petitioner's statement that he set the first fire in the middle of the storeroom was provided by Harold Naiman's testimony regarding his observation of the second floor storage area, namely, that he saw the bulk of the fire in the "whole middle [area]." (2T90-22 to 23). The petitioner's description of the materials (mats) which he ignited was supported by the fact that cortex bales actually burned. (See 3T90-3 to 5; 2T85-19 to 2T86-7). In his confession the petitioner specified the second floor storeroom as the arson site (3T89-2 to 5); in fact, the fire broke out in that area. (2T72-17 to 19).

The petitioner also related that he had set the fire with a match (3T89-2 to 5); no natural cause was found to explain the fire on January 29, 1980. (2T102-2 to 6). The petitioner's admission that he had intentionally started the fire by means of a book of matches (3T89-4) was verified by the testimony of Chief Shortway, who said that the bales ignited when he attempted to light them with a match. (2T101-7 to 11). In addition, the petitioner's comment that "there was absolutely no harm to anyone or anything except the matts (sic)" comports with the plant manager's testimony that with the exception of smoke damage, property loss was limited to the cortex bales. (See 3T91-19 to 20; 2T74-5 to 14).

Respondent further notes that the petitioner's detailing of his activities prior to setting the fire on January 29, 1980 was entirely consistent with his prescribed work duties. (See 3T88-25 to 3T89-3; 2T80-11 to 17). Petitioner's statement that in setting the fire he felt

that he was not "appreciated" by his employer and "did it for recognition from any superior" (3T90-13 to 16) is also in accord with Mr. Naiman's testimony that the petitioner's continued employment at Sealy was "in jeopardy" due to excessive absenteeism. (2T81-17 to 22). In addition, the petitioner said in his confession that he used an extinguisher to put out the fire on January 29, 1980; this corresponds to Mr. Naiman's testimony that when he arrived on the second floor, employees were already using extinguishers. (3T89-6 to 2T72-21). Finally, the petitioner's reference to clean-up procedures was confirmed in the response elicited during the State's direct examination of Mr. Naiman. (3T89-10 to 11; 2T7508 to 9).

In the case at bar, there was also extensive corroborating evidence presented at trial regarding the second arson. Again, the petitioner's confession that he had set a fire on that date at the Sealy factory was supported by independent evidence of a fire at the facility on that date. (3T91-21 to 2T92-7; 2T77-7 to 20; 2T106-8 to 11). The petitioner's identification of the second floor storeroom site of the fire, where the mattress construction materials were kept, agreed with trial testimony in the State's case. (3T92-1 to 11; 3T92-19 to 22; 2T77 to 18). The presence of the petitioner in the building on February 12, 1980 was confirmed by his time card for that date, which showed that he had reported for work at 6:53 a.m , and the alarm came into the fire department at 7:03 a.m. (2T80-3 to 6; 2T110-12 to 13). The time card also indicates that the petitioner was on the premises until 9:40 a.m., at which time he "punched out." (2T96-23 to 24).

In his confession the petitioner said that upon arriving at the factory on February 12, 1980, he punched in and then proceeded to the third floor, remaining only long enough to inquire if mattress assembly materials had to be transported there; he then stated that he went downstairs to the storeroom area. (3T91-25 to 3T92-11). This recitation of petitoner's actions immediately prior to his setting the second fire is in complete conformity with his normal routine of work-related duties as established by Mr. Naiman's testimony. (2T80-13 to 17). The fact of petitioner's access to the arson site on the second floor, which area he accurately described in terms of the physical layout of the plant, was also corroborated by Mr. Naiman's trial testimony. (3T92-1 to 11; 2T80-13 to 17).

Furthermore, the petitioner's general description of "mats" as the materials which ignited during the second fire is supported by the

fact that hog and horse hair pads used in mattress construction actually burned in the fire on February 12, 1980. (3T92-19 to 20; 3T94-2 to 5; 2T77-21 to 23; 2T78-8 to 14). The manner in which the petitioner described starting the second fire is also in accord with the evidence adduced in the State's case regarding the fact that the fire was deliberately set and ignition probably resulted from the mats being exposed to an open flame. (3T91-25 to 3T92-22; 2T107-11 to 2T108-9). Finally, the minimal nature of the losses caused by the second fire, which fact was adverted to in petitioner's statement, was borne out by the State's proofs. (3T94-9 to 11; 2T78-21 to 2T79-7).

In the instant case, the petitioner essentially argues that sufficient proofs must exist to convict him independent of the confession itself. By this rationale the State would be required to present independent corroborating proof of such a magnitude as would exclude any other possible defendant; this reasoning, if pursued to its logical endpoint, renders any confession superfluous. Respondent submits that adopting the standard urged by petitioner, which, clearly, is not that set forth by this Court, would create an unwarranted burden of proof clearly contrary to established law. In the present case, the issue considered by the state courts was whether the facts adduced at trial comported with the formula articulated in *State v. Lucas, supra.* (Such test, as discussed herein, is entirely consistent with federal constitutional law regarding corroboration of confessions.) Since there can be no reasonable argument but that the federal and state formulations are the same, the only issue presented to this Court is the purely factual determination of whether the evidence below was sufficient to comply with this standard. Both the trial court and the New Jersey Supreme Court held that it was. No factor in this sequence suggests the propriety of review by this Court. Grant of the writ of certiorari is not justified merely to afford this petitioner yet another opportunity to question the factual findings made by the trial court and affirmed by the New Jersey Supreme Court.

CONCLUSION

It is respectfully submitted that the petitioner has wholly failed to sustain his burden of establishing under *Sup. Ct. R. 17* that there are special and important reasons why the writ should be granted. In the present case, the New Jersey Supreme Court has neither decided an important question of federal law which has not been, but should be, settled by this Court, nor has it decided a federal question in a way in conflict with an applicable decision of this Court. For the foregoing reasons, the petition for certiorari should be denied.

Respectfully submitted,

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